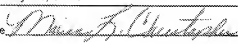



PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 020366D1	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on <u>January 29, 2010</u> Signature <u></u> Typed or printed name <u>Marian L. Christopher</u>		Application Number 10/674,041 First Named Inventor John HARVEY et al. Art Unit 3664 Filed September 29, 2003 Examiner McDieunel Marc	
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a notice of appeal. The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.			
I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. (See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)) <input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>53,440</u> <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____		<div style="text-align: center;">  Signature Ashish L. Patel Typed or printed name 858-658-2585 Telephone number January 29, 2010 Date </div>	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.			
<input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is required to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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The information provided by you in this form will be subject to the following routine uses:

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5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

PRE-APPEAL BRIEF REQUEST FOR REVIEW

REMARKS/ARGUMENTS

Status of the Claims

Claims 20-63 are currently pending in the application. Claims 20, 32, 44, and 62-63 are independent. Applicants request reconsideration and allowance of the pending claims. Applicants also herein incorporate all of their previous arguments by reference.

Rejections Under 35 U.S.C. § 103(a)

The Examiner rejected claims 20-63 under 35 U.S.C. § 103(a) as being unpatentable over *Autermann* (U.S. Patent No. 6,122,580 (incorrectly listed in the Office action as U.S. Patent No. 6,232,874) hereinafter, "*Autermann* ") in view of *Murphy* (U.S. Patent No. 6,232,874 hereinafter "*Murphy*") and *Tamir* (U.S. Patent Publication No. 2004/0220807 hereinafter "*Tamir*") and further in view of *Joao* (U.S. Publication No. 2003/0206102 hereinafter, "*Joao*"). Applicants respectfully traverse this rejection.

Applicants respectfully submit that none of the cited references, either individually or in combination, teach or suggest all of the features of independent claims 20 (and claims 32 and 44 similarly), including

an input device for entry of vehicle operator identification information; a transceiver for transmitting said vehicle operator identification information to a remote location for validation and receiving from said remote location a reply message specifying which of said selected functions the operator is validated to operate and specifying at least one action to be taken to indicate the validation to the vehicle operator; and means for enabling said selected functions and the at least one action specified by said reply message. (Emphasis added).

Applicants further submit that the combination of *Autermann* , *Murphy*, *Tamir*, and *Joao* is improper because it would not have been obvious to one of ordinary skill in the art to have

combined all of the cited references to achieve the claimed features as, for example, *Tamir* teaches away from *Autermann*.

First, while the Examiner appears to equate the identifier ID encoded on key 1 taught by *Autermann* to the claimed vehicle operator identification information that is entered and transmitted to a remote location for validation, this is incorrect. *Autermann* clearly discloses that the identifier ID code is directly related to a physical/mechanical key 1, not to a vehicle operator. See, *Autermann*, column 4, lines 1 to 5. Therefore, at best the identifier ID of key 1 can indirectly relate to a user who has the key 1, because as is obvious to one of ordinary skill in the art, a key can be passed between multiple users. In view of the above, Applicants submit that *Autermann* does not teach or suggest vehicle operator identification information and therefore can not teach or suggest entering, or transmitting this information to a remote location for validation.

Second, in the final office action (mailed October 30, 2009) at page 3, the Examiner admits that *Autermann* does not “explicitly disclose a reply message” having both of the above discussed features. The Examiner attempts to cure these deficiencies by citing *Murphy*, *Tamir*, and *Joao* in combination with *Autermann*. However, Applicants submit that the combination of references still does not teach or suggest all of the claimed features.

For example, *Autermann* fails to teach or suggest at least the reply message specifying at least one action to be taken to indicate the validation to the vehicle operator, and means for enabling the at least one action specified by said reply message. As to *Murphy*, this reference is directed to restricting the use of a vehicle by certain users. *Murphy*, Abstract. In particular, an apparatus 170, located at the vehicle determines the restricted use based on biometric indicia from users. *Murphy*, col. 5, ll. 16-32. While *Murphy* does appear to teach that apparatus 107 can

receive updated restricted use data from a remote facility (see, *Murphy*, column 14, lines 25-47), apparatus 170 does not receive the updated use data in a reply message received following the transmission of vehicle operator identification information, nor does the reply message include at least one action to be taken in response to indicate the validation to the vehicle operator.

Likewise, *Tamir* fails to cure the deficiencies of *Autermann* and *Murphy*. *Tamir* is directed to a method for verifying and identifying users by audio or ultrasonic signals in a local computer system. *Tamir*, Abstract. *Tamir* does not teach or suggest at least “receiving from said remote location a reply message; and means for enabling said selected functions and the at least one action specified by said reply message,” as recited in the claims. For example, as the Examiner indicates, *Tamir* teaches “performing validation at the local user’s device,” which Applicants submit is completely the opposite of what is recited in claims 20, 32, and 44. Therefore, the addition of *Tamir* does not cure the deficiencies identified above. Further, even the Examiner appears to recognize that the addition of *Tamir* is less than ideal, stating that it would have been obvious on page 4 “to include in the message transmitted to the remote station validation information as taught by *Tamir* in order to relieve the central station from verification process and to allow the central station to select permitted function according to[e] the user’s identification.” However, Applicants submit that this is in complete contrast to the claimed features as discussed above, e.g., remote validation.

Finally, the Examiner alleges that *Joao* teaches “specifying at least one action to be taken to indicate the validation of the vehicle operator.” Final office action at page 4. However, Applicants submit that independent claims 20, 32, and 44 recite “specifying at least one action to be taken to indicate the validation to the vehicle operator,” (emphasis added) not “of the vehicle operator.” *Joao* does not teach or suggest specifying an action to be taken so as to indicate the

validation to the vehicle operator, nor does the Examiner allege such a teaching. *Joao* teaches, for example, in FIG. 19, a method flow shown that occurs between a vehicle, a server (510, 952, 970), and a remote owner (150). The flow indicates that the server 510 detects access to the vehicle and then communicates with the owner 150. The “confirmation message” and the “transmit reply signal” indicated by the Examiner are exchanged between the server 510 and the owner 150, not with the vehicle.

Therefore, Applicants submit that none of the cited references, either individually or in combination, teach or suggest all of the features of independent claims 20, 32, and 44 and thus these claims are allowable. Also, Applicants submit that dependent claims 21-31, 33-43, and 45-61 are also allowable, at least for depending from allowable base claims.

With respect to independent claims 62 and 63, Applicants submit that none of the cited references teach or suggest all of the features of independent claims 62-63. For example, claim 62 recites, *inter alia*, “configured to generate a notification of the validation and to transmit the notification to a third party” and claim 63 recites similar features. In the office action, the Examiner alleges that the recitation of “generating a notification of the validation for a third party” is a design choice. See, final office action at page 7. Applicants respectfully disagree. The Examiner may not simply allege that the validation can be transmitted or received anywhere without support then conclude this feature is a design choice. In addition, Applicants submit that design choice relates to ornamentation, not to functionality as appears to be alleged by the Examiner. See, MPEP §2144.04. Further, claims 62 and 63 positively recite that the validation is transmitted to a third party (e.g., a dispatcher, the vehicle owner, etc. instead of the vehicle operator) from a remote location, which is not taught by any of the references. Therefore, Applicants submit that independent claims 62-63 are also allowable over the cited art.

CONCLUSION

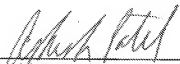
Applicants believe that the present application is now in condition for allowance. Such allowance is respectfully solicited.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account 17-0026.

Respectfully submitted,

Dated: January 29, 2010

By: _____


Ashish L. Patel
Reg. No. 53,440
(858) 658-2585

QUALCOMM Incorporated
5775 Morehouse Drive
San Diego, California 92121
Telephone: (858) 658-2585
Facsimile: (858) 658-2502